

Appl. No. 10/749,997
Amdt. dated May 24, 2006
Reply to Office Action of January 24, 2006

REMARKS/ARGUMENTS

Claims 1-19 are pending in the instant application. Claims 1-6 have been canceled. Accordingly, claims 7-19 form the subject matter of this response. Reconsideration of the present application in view of the following remarks is respectfully requested.

Rejections Under 35 U.S.C. § 103(a)

There is no suggestion or motivation to combine the references as suggested by the Examiner.

In the Office Action mailed January 24, 2006, the Examiner rejects claims 7-19 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat No. 6,174,303 filed September 26, 1997 by Surprise et al. (herein "the Surprise patent") in view of U.S. Pat No. 5,873,868 filed June 5, 1998 by Nakahata (herein "the Nakahata patent") and further in view of U.S. Pat No. 4,988,346 filed June 5, 1989 by Pfefferkorn (herein "the Pfefferkorn patent"). This rejection is respectfully traversed.

In order to establish a *Prima Facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

The Surprise patent is directed to a disposable absorbent article defining an outer cover, an absorbent chassis and a dual fastening system. The dual fastening system includes a pair of primary fasteners located on the outer cover in one of the waist regions of the absorbent article and a pair of secondary fasteners located on the outer cover in the opposite waist region of the absorbent article. The primary fasteners are configured to engage an outer surface of the absorbent article to maintain the article about the waist of the wearer and the secondary fasteners are configured to engage a bodyfacing surface of the absorbent chassis to support the absorbent chassis. The absorbent chassis is attached to the outer cover at the waist edges and remains at least partially unattached from the outer cover

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between the waist edges to allow the outer cover to have a blousy appearance. Thus, the disposable absorbent article has an aesthetically pleasing garment-like appearance and improved fit and containment during use. See Abstract.

The Nakahata patent is directed to an absorbent article adapted to be worn about the lower torso of a wearer. The article includes a liquid-impervious, flexible backsheet adapted to face outwardly relative to the body a wearer, a liquid- pervious topsheet adapted to face the body of the wearer, and an absorbent core positioned between the backsheet and the topsheet. The topsheet is elastically extensible and includes a plurality of slits or cuts that extend through the topsheet material and that enlarge to define a plurality of openings in the topsheet when it is subjected to tensile forces as it is worn. The openings permit solid and semi-solid bodily exudates to pass through the topsheet to the absorbent core as the diaper is worn. Upon removal of the diaper from the body of the wearer the tensile forces within the topsheet are relaxed, thereby causing the openings in the topsheet to close and substantially conceal from view the bodily exudates that had passed through the topsheet. See Abstract.

The Pfefferkorn patent is directed to a disposable diaper having a fluid permeable inner layer, a fluid impermeable outer layer and an absorbent batt sandwiched between the layers, the diaper having a crotch portion extending between front and rear portions. The rear portion of the diaper is provided with a first securing system affixed to the outer surface of its outer layer so that the rear portion may be secured to the front portion as the diaper is wrapped around a baby. The front portion of the diaper is provided with a second securing system to allow the opposing edges of the front portion to be secured adjacent one another at a location behind the baby's back. See Abstract. The Pfefferkorn patent has the title "Rear Fastening Disposable Diaper". See title (emphasis added).

Applicants submit that the Examiner has provided no suggestion or motivation as to why one of ordinary skill in the art would combine the teachings of the Surprise patent, the Nakahata patent and the Pfefferkorn patent as suggested by the Examiner. Indeed, it appears that the Examiner is improperly relying on hindsight based on the teachings of the present invention in order to suggest that one of ordinary skill in the art would be motivated

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to combine the above references in the manner suggested. Further, Applicants submit that the Pfefferkorn patent teaches away from such an arrangement.

Independent claims 7 and 19 are directed to a disposable absorbent article. In particular, independent claims 7 and 19 of the present invention include, *inter alia*, a dual fastening system, the dual fastening system comprising, a pair of primary ears joined to the rear waist region, each primary ear having a bodyfacing surface, a garment facing surface, a proximal edge, a distal edge, a first connecting edge and a second connecting edge, the first and second connecting edges connecting the proximal and distal edges, and a primary fastener being configured to engage at least a portion of the garment facing surface of the outer cover, and a pair of secondary ears joined to the front waist region, each secondary ear having a bodyfacing surface, a garment facing surface, a proximal edge, a distal edge, a first connecting edge and a second connecting edge, the first and second connecting edges connecting the proximal and distal edges, and a secondary fastener being configured to engage at least a portion of the bodyfacing surface of the liner.

The Examiner acknowledges that neither the Surprise patent nor the Nakahata patent discloses secondary ears having a proximal edge. The Examiner believes that secondary ears having a proximal edge are well known in the art and believes that the Pfefferkorn patent confirms this and teaches a disposable absorbent article having a dual fastening system with primary and secondary ears having a proximal edge (Figs. 1, 3 and 4 and col. 2, line 62 to col. 3, line 45). The Examiner also believes that the Pfefferkorn patent indicates that the arrangement of fasteners limits the infant's access to the securing point (col. 1, line 61 to col. 2, line 2), and that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the article of Surprise to include the primary and secondary ears both having a proximal edge as taught by Pfefferkorn, to limit the infant's access to the securing point.

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Applicants submit that there is no motivation to combine the teachings of the Suprise patent, the Nakahata patent, and the Pfefferkorn patent. Specifically, Applicants submit that the Suprise patent, the Nakahata Patent and the Pfefferkorn patent can not be combined with out rendering the prior art unsatisfactory for its intended purpose or changing the principle of operation of a reference. (See MPEP 2143.01). That is, combining the secondary ear of the Pfefferkorn patent with the diaper of the Suprise patent and the Nakahata patent would either render the secondary ear of the Pfefferkorn patent unsatisfactory for its intended purpose, fastening on the exterior of the diaper (See Figs. 3 and 4 and Col. 1 lines 61 – 67), or render the diaper of the Suprise patent unsatisfactory for its intended purpose, specifically configuring the secondary fasteners to engage a bodyfacing surface of the absorbent chassis (See abstract). As such, Applicants assert that there is no motivation to combine the teachings of the Suprise patent, the Nakahata patent, and the Pfefferkorn patent as suggested by the Examiner.

For at least this reason, Applicants respectfully submit that claims 7 and 19 are patentable over the Suprise patent in light of the Nakahata patent and the Pfefferkorn patent and that the rejection should be withdrawn. Likewise, Applicants respectfully submit that claims 8-18, which depend from independent claim 7, are patentable over the Suprise patent in light of the Nakahata patent and the Pfefferkorn patent for at least the reasons stated above.

In conclusion, and in view of the above remarks, reexamination, reconsideration and withdrawal of the rejections of claims 7-19 under 35 U.S.C. § 103 are respectfully requested. Moreover, it is respectfully submitted that all of the presently presented claims are in condition for allowance and such action is earnestly solicited. If the Examiner has any questions or if there are any remaining issues that can be handled by telephone, the Examiner is invited to contact the undersigned at (920) 721-4558.

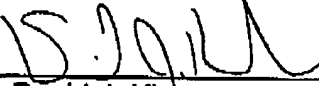
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Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc.
deposit account number 11-0875.

The undersigned may be reached at: 920-721-4558.

Respectfully submitted,
JANET E. COLLINS ET AL.

By



David J. Klann
Registration No.: 46,833
Attorney for Applicant(s)

CERTIFICATE OF TRANSMISSION

I, Barbara D. Miller, hereby certify that on May 24, 2006, this document is being facsimile
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